

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	ULS File Nos. 0006867447, 0006867467,
Applications of Cellco Partnership d/b/a)	0006867470, 0006867476, 0006867520,
Verizon Wireless and T-Mobile License LLC)	0006867545, 0006867559, 0006868438,
)	0006868544, 0006868798, 0006869754,
For Consent To Assign Advanced Wireless Service)	0006869768, 0006869777, 006869790,
and Personal Communications Service Licenses)	0006869871, and 0006869873

ORDER

Adopted: December 10, 2015

Released: December 10, 2015

By the Chief, Wireless Telecommunications Bureau:

1. In this Order, we dismiss an objection by Sirius against the applications¹ of T-Mobile and Verizon Wireless to exchange a number of AWS and PCS licenses, on the grounds that Sirius’s interference allegations are not specific to the proposed transaction between T-Mobile and Verizon Wireless, and are better addressed in an appropriate proceeding designed to address the interference claims.

2. *Background.* On July 17, 2015, Cellco Partnership d/b/a Verizon Wireless and certain of its licensee subsidiaries (“Verizon Wireless”) and T-Mobile License LLC (“T-Mobile” and together with Verizon Wireless, the “Applicants”) filed the Applications pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Communications Act”),² seeking approval to exchange a number of full and partial Advanced Wireless Service (“AWS”) and Personal Communications Service (“PCS”) spectrum licenses. On August 11, 2015, Sirius XM Radio Inc. (“Sirius”) filed an objection to the license exchange, citing concerns about interference from T-Mobile’s AWS operations to its subscribers.³ The Commission released a Public Notice on September 23, 2015, announcing that the Applications would be governed by “permit-but-disclose” *ex parte* procedures.⁴ T-Mobile and Verizon Wireless both responded to the Objection, arguing among other things that the alleged interference is not located within the service areas of the AWS licenses that are the subject of, and thus has no bearing on, the proposed

¹ ULS File Nos. 0006867447, 0006867467, 0006867470, 0006867476, 0006867520, 0006867545, 0006867559, 0006868438, 0006868544, 0006868798, 0006869754, 0006869768, 0006869777, 006869790, 0006869871, and 0006869873 (the “Applications”). Verizon Wireless and T-Mobile have designated ULS File No. 0006867447 as the lead application.

² 47 U.S.C. § 310(d).

³ See Objection of Sirius XM Radio Inc. to Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless, ULS File Nos. 0006867447, etc., filed Aug. 11, 2015 (“Objection”). Sirius acknowledges that it filed the Objection after the deadline for submitting petitions to deny the Applications. See Objection at 2 n.2. We accordingly treat the Objection as an informal objection pursuant to section 1.41 of the Commission’s rules, 47 C.F.R. § 1.41.

⁴ See Commission Modifies *Ex Parte* Status for Proposed Exchange of Licenses Between Cellco Partnership d/b/a Verizon Wireless and T-Mobile License LLC, ULS File Nos. 0006867447, etc., *Public Notice*, DA 15-1066 (rel. Sept. 23, 2015).

transaction.⁵ The parties submitted a number of replies and counter-replies raising a number of arguments that essentially relate to T-Mobile's alleged AWS interference.⁶

3. Sirius asserts in its Objection that some of its subscribers in large urban markets recently have begun experiencing harmful interference to their reception of satellite radio signals.⁷ Sirius alleges that, based upon "initial testing," AWS base stations operated by T-Mobile are contributing to "intermodulation" that is resulting in harmful interference.⁸ Sirius claims that this interference problem will worsen as T-Mobile deploys its AWS network in additional markets.⁹ Sirius concludes that the proposed transaction would facilitate T-Mobile's AWS deployment and that the Applications should not be granted.¹⁰

4. T-Mobile responds that denying grant of the Applications would not remedy the service disruptions claimed by Sirius, as the geographic areas where interference allegedly is occurring are not covered by the AWS licenses that are the subject of the proposed transaction.¹¹ T-Mobile further claims that the design of the receivers used by Sirius subscribers means that any wireless provider or combination of providers operating on a particular combination of AWS and other frequencies could produce the intermodulation that Sirius alleges.¹² T-Mobile also maintains that the Commission generally does not use its application review process to impose conditions to "remedy pre-existing harms or harms that are unrelated to the transaction"¹³ and that the Commission already has a separate process for addressing Sirius' interference claim.¹⁴ Verizon Wireless asserts that the alleged interference to Sirius subscribers does not result from the proposed transaction nor would it be addressed by denying the Applications.¹⁵

⁵ See Response of T-Mobile License LLC to Objection of Sirius XM Radio Inc. and Motion To Dismiss, ULS File Nos. 0006867447, etc., filed Aug. 26, 2015 ("T-Mobile Response"); Response of Cellco Partnership d/b/a/ Verizon Wireless to Objection of Sirius XM Radio Inc., ULS File Nos. 0006867447, etc., filed Aug. 26, 2015 ("Verizon Wireless Response").

⁶ See Reply of Sirius XM Radio Inc., ULS File Nos. 0006867447, etc., filed Sept. 11, 2015; Sur-Reply of T-Mobile License LLC, ULS File Nos. 0006867447, etc., filed Oct. 2, 2015 ("T-Mobile Sur-Reply"); *Ex Parte* of T-Mobile License LLC, ULS File Nos. 0006867447, etc., filed Oct. 6, 2015; Submission for the Record of Sirius XM Radio Inc., ULS File Nos. 0006867447, etc., filed Oct. 9, 2015.

⁷ See Objection at 2.

⁸ Objection at 2-3.

⁹ See Objection at 3.

¹⁰ See Objection at 6. Sirius raises additional arguments alleging that T-Mobile's level of cooperation with Sirius in conducting interference tests implicates licensee character qualifications. See Objection at 4-8.

¹¹ See T-Mobile Response at 6-7.

¹² See T-Mobile Response at 7-8.

¹³ T-Mobile Response at 10, citing Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC for Consent To Transfer Control of Licenses, Authorizations, & Spectrum Manager & *De Facto* Transfer Leasing Arrangements & Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17463 ¶ 29 (2008). T-Mobile additionally argues that the Objection is late-filed and that Sirius does not have party-in-interest standing. See T-Mobile Response at 2-8. T-Mobile also claims that the Objection's description of the interference testing with Sirius is factually inaccurate. See T-Mobile Response at 11-15.

¹⁴ See T-Mobile Sur-Reply at 4, referencing 47 C.F.R. § 27.64.

¹⁵ See Verizon Wireless Response at 2.

5. *Discussion.* We dismiss the Objection because the interference allegations upon which Sirius relies would be better addressed in a different proceeding. Although the Commission possesses broad discretion to review a variety of factors in making a public interest determination with respect to assignment applications,¹⁶ section 27.64 of the Commission's rules¹⁷ provides for a dedicated and equitable process for addressing interference complaints of the nature raised here, as Sirius notes.¹⁸ Sirius has not met its burden, for purposes of our review of the Applications, in demonstrating that the alleged interference would result in a transaction-specific harm. Sirius speculates that the proposed transaction could exacerbate the alleged interference,¹⁹ but such an argument merely reinforces the appropriateness of addressing complaints of this nature in proceedings focused on specific interference allegations. Moreover, Sirius cites no instance where we have denied grant of an assignment or transfer of control application due to interference allegations. Furthermore, Sirius has not proposed any conditions that could be imposed on grant of the Applications to remedy alleged harms that arise from the transaction.²⁰ Accordingly, we dismiss the Objection because Sirius's allegations are better addressed elsewhere.²¹

6. Our decision here to dismiss the Objection does not foreclose any right of Sirius to seek relief on the interference allegations in the appropriate proceeding. Nor is our decision intended to pre-judge any outcome of a course of action under section 27.64 of the Commission's rules,²² or some similar process, should that be pursued. To the extent that the Commission ultimately concludes that a licensee must take action to address harmful interference affecting Sirius's operations, we anticipate that the involved licensees will take the necessary action in response to such a directive.

7. *Ordering Clauses.* Accordingly, having reviewed the Applications and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), and Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, the Objection filed by Sirius XM Radio Inc. is hereby DISMISSED for the reasons stated herein.

8. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that the staff of the Mobility and Broadband Divisions of the Wireless Telecommunications Bureau SHALL PROCESS the following applications consistent with this *Order* and the Commission's rules: ULS File Nos. 0006867447, 0006867467,

¹⁶ See Qwest Communications International, Inc. and US WEST, Inc., Applications for Transfer of Control, *Memorandum Opinion and Order*, 15 FCC Rcd 5376, 5392-93 ¶ 28 (2000) ("*Qwest-US WEST Order*"). See also Applications of Cellco Partnership d/b/a Verizon Wireless, Coral Wireless, LLC and Coral Wireless Licenses, LLC for Consent To Assign Seven Personal Communications Service Licenses Covering Hawaii, *Order*, 29 FCC Rcd 13397, 13400 ¶ 9 (WTB MD 2014) (finding that petition to deny assignment application would be dismissed on grounds that misconduct allegations would be better addressed in an enforcement proceeding).

¹⁷ 47 C.F.R. § 27.64

¹⁸ See Objection at 3.

¹⁹ See Objection at 6.

²⁰ See, e.g., Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent To Transfer Control of and Assign Licenses and Authorizations, *Memorandum Opinion and Order*, 28 FCC Rcd 13670, 13719 ¶ 90 (WTB, IB 2013); Applications of AT&T Inc. and Centennial Communications Corp. for Consent To Transfer Control, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13969, 13972 ¶¶ 133, 141 (2009).

²¹ In this instance, because we find that the interference allegations are better addressed elsewhere, we need not address the merits of the interference allegations or numerous other arguments raised by the parties relating to, *inter alia*, alleged procedural and character deficiencies.

²² 47 C.F.R. § 27.64.

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0006868798, 0006869754, 0006869768, 0006869777, 006869790, 0006869871, and 0006869873.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief, Wireless Telecommunications Bureau